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11 Attorneys for Defendant
12 HEIST STUDIOS LIMITED
13 (*erroneously named as Heist Studios*)

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 UNDISCOVERED CORP., a California
17 Corporation d/b/a HEIST,

18 Defendant,

19 v.

20 HEIST STUDIOS, a United Kingdom
21 company,

22 Defendant.

23 HEIST STUDIOS LTD, a United
24 Kingdom company,

25 Counterclaim Plaintiff,

26 v.

27 UNDISCOVERED CORP., a California
28 Corporation d/b/a HEIST,

Counterclaim Defendant.

Case No.: 2:18-cv-05719 FMO (ASx)

(Hon. Fernando M. Olguin)

**STIPULATED PROTECTIVE
ORDER**

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does
7 not confer blanket protections on all disclosures or responses to discovery and that the
8 protection it affords from public disclosure and use extends only to the limited
9 information or items that are entitled to confidential treatment under the applicable
10 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
11 that this Stipulated Protective Order does not entitle them to file confidential
12 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
13 followed and the standards that will be applied when a party seeks permission from
14 the court to file material under seal.

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16 B. GOOD CAUSE STATEMENT

17 This action is likely to involve customer and pricing lists, supplier information,
18 and other valuable research, development, commercial, financial, and/or proprietary
19 information for which special protection from public disclosure and from use for any
20 purpose other than prosecution of this action is warranted. Such confidential and
21 proprietary materials and information consist of, among other things, confidential
22 business and financial information, and confidential research, development, or
23 commercial information, pricing and revenue data, supplier information, information
24 otherwise generally unavailable to the public, or which may be privileged or otherwise
25 protected from disclosure under state or federal statutes, court rules, case decisions, or
26 common law. Accordingly, to expedite the flow of information, to facilitate the

1 prompt resolution of disputes over confidentiality of discovery materials, to
2 adequately protect information the parties are entitled to keep confidential, to ensure
3 that the parties are permitted reasonable necessary uses of such material in preparation
4 for and in the conduct of trial, to address their handling at the end of the litigation, and
5 serve the ends of justice, a protective order for such information is justified in this
6 matter. It is the intent of the parties that information will not be designated as
7 confidential for tactical reasons and that nothing be so designated without a good faith
8 belief that it has been maintained in a confidential, non-public manner, and there is
9 good cause why it should not be part of the public record of this case.

10 2. DEFINITIONS

11 2.1 Action: the above-captioned action, *Undiscovered Corp. v. Heist Studios*, Case
12 No.: 2:18-cv-05719 FMO (ASx)

13 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
14 information or items under this Order.

15 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is
16 generated, stored or maintained) or tangible things that qualify for protection under
17 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
18 Statement.

19 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
20 support staff).

21 2.5 Designating Party: a Party or Non-Party that designates information or items
22 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”
23 or “CONFIDENTIAL ATTORNEY’S EYES ONLY” as set forth herein.

24 2.6 Disclosure or Discovery Material: all items or information, regardless of the
25 medium or manner in which it is generated, stored, or maintained (including,
26

among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8 House Counsel: attorneys who are employees of a party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, and includes support staff.

2.11 Party: any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this Action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEY’S EYES ONLY.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

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3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications

1 for which protection is not warranted are not swept unjustifiably within the ambit of
2 this Order. Mass, indiscriminate, or routinized designations are prohibited.
3 Designations that are shown to be clearly unjustified or that have been made for an
4 improper purpose (e.g., to unnecessarily encumber the case development process or to
5 impose unnecessary expenses and burdens on other parties) may expose the
6 Designating Party to sanctions. If it comes to a Designating Party's attention that
7 information or items that it designated for protection do not qualify for protection, that
8 Designating Party must promptly notify all other Parties that it is withdrawing the
9 inapplicable designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
12 or ordered, Disclosure or Discovery Material that qualifies for protection under this
13 Order must be clearly so designated before the material is disclosed or produced.
14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic documents,
16 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
17 Producing Party affix at a minimum, the legend "CONFIDENTIAL" or
18 "CONFIDENTIAL ATTORNEY'S EYES ONLY" (hereinafter "Confidentiality
19 legend"), to each page that contains protected material. If only a portion or portions of
20 the material on a page qualifies for protection, the Producing Party also must clearly
21 identify the protected portion(s) (e.g., by making appropriate markings in the
22 margins). A Party or Non-Party that makes original documents available for
23 inspection need not designate them for protection until after the inspecting Party has
24 indicated which documents it would like copied and produced. During the inspection
25 and before the designation, all of the material made available for inspection shall be
26 deemed "CONFIDENTIAL ATTORNEY'S EYES ONLY." After the inspecting Party

1 has identified the documents it wants copied and produced, the Producing Party must
2 determine which documents, or portions thereof, qualify for protection under this
3 Order. Then, before producing the specified documents, the Producing Party must
4 affix the “Confidentiality legend” to each page that contains Protected Material. If
5 only a portion or portions of the material on a page qualifies for protection, the
6 Producing Party also must clearly identify the protected portion(s) (e.g., by making
7 appropriate markings in the margins).

8 (b) for testimony given in depositions that the Designating Party identify the
9 Disclosure or Discovery Material on the record, before the close of the deposition all
10 protected testimony.

11 (c) for information produced in some form other than documentary and for any
12 other tangible items, that the Producing Party affix in a prominent place on the
13 exterior of the container or containers in which the information is stored the
14 appropriate Confidentiality legend. If only a portion or portions of the information
15 warrants protection, the Producing Party, to the extent practicable, shall identify the
16 protected portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
18 to designate qualified information or items does not, standing alone, waive the
19 Designating Party’s right to secure protection under this Order for such material.
20 Upon timely correction of a designation, the Receiving Party must make reasonable
21 efforts to assure that the material is treated in accordance with the provisions of this
22 Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
3 of confidentiality at any time that is consistent with the Court's Scheduling Order.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
5 process under Local Rule 37.1 et seq.

6 6.3 The burden of persuasion in any such challenge proceeding shall be on the
7 Designating Party. Frivolous challenges, and those made for an improper purpose
8 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
9 expose the Challenging Party to sanctions. Unless the Designating Party has waived or
10 withdrawn the confidentiality designation, all parties shall continue to afford the
11 material in question the level of protection to which it is entitled under the Producing
12 Party's designation until the Court rules on the challenge.

13
14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is
16 disclosed or produced by another Party or by a Non-Party in connection with this
17 Action only for prosecuting, defending, or attempting to settle this Action. Such
18 Protected Material may be disclosed only to the categories of persons and under the
19 conditions described in this Order. When the Action has been terminated, a Receiving
20 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).
21 Protected Material must be stored and maintained by a Receiving Party at a location
22 and in a secure manner that ensures that access is limited to the persons authorized
23 under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

- (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record, and any other outside counsel who is not an officer, director or employee of any party, and to whom it is reasonably necessary to disclose the information for this Action;
- (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;
- (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- (d) the court and its personnel;
- (e) court reporters and their staff;
- (f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- (g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;
- (h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected

1 Material may be separately bound by the court reporter and may not be
2 disclosed to anyone except as permitted under this Stipulated Protective Order;
3 and

4 (i) any mediator or settlement officer, and their supporting personnel, mutually
5 agreed upon by any of the parties engaged in settlement discussions.

6 7.3 Disclosure of “CONFIDENTIAL ATTORNEY’S EYES ONLY”

7 Information or Items. Unless otherwise ordered by the court or permitted in writing
8 by the Designating Party, a Receiving Party may disclose any information or item
9 designated “CONFIDENTIAL ATTORNEY’S EYES ONLY” only to those persons
10 listed in Section 7.2 subsections (a) and (c) through (i), but not subsection (b). The
11 designation of information or documents as “CONFIDENTIAL ATTORNEY’S
12 EYES ONLY” shall be limited to such information or documents as to which the
13 designating party believes in good faith that disclosure to any of the persons listed in
14 Section 7.2(b) would cause harm to the confidentiality or competitive position of the
15 disclosing party.
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17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED 18 IN OTHER LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation that
20 compels disclosure of any information or items designated in this Action as
21 “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEY’S EYES ONLY” that Party
22 must:

23 (a) promptly notify in writing the Designating Party. Such notification shall
24 include a copy of the subpoena or court order;

25 (b) promptly notify in writing the party who caused the subpoena or order to
26 issue in the other litigation that some or all of the material covered by the subpoena or
27

1 order is subject to this Protective Order. Such notification shall include a copy of this
2 Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by
4 the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with the
6 subpoena or court order shall not produce any information designated in this action as
7 “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEY’S EYES ONLY” before a
8 determination by the court from which the subpoena or order issued, unless the Party
9 has obtained the Designating Party’s permission. The Designating Party shall bear the
10 burden and expense of seeking protection in that court of its confidential material and
11 nothing in these provisions should be construed as authorizing or encouraging a
12 Receiving Party in this Action to disobey a lawful directive from another court.

13
14 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
15 PRODUCED IN THIS LITIGATION

16 (a) The terms of this Order are applicable to information produced by a Non-
17 Party in this Action and designated as “CONFIDENTIAL” or “CONFIDENTIAL
18 ATTORNEY’S EYES ONLY.” Such information produced by Non-Parties in
19 connection with this litigation is protected by the remedies and relief provided by this
20 Order. Nothing in these provisions should be construed as prohibiting a Non-Party
21 from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to produce
23 a Non-Party’s confidential information in its possession, and the Party is subject to an
24 agreement with the Non-Party not to produce the Non-Party’s confidential
25 information, then the Party shall:

1 (1) promptly notify in writing the Requesting Party and the Non-Party
2 that some or all of the information requested is subject to a confidentiality
3 agreement with a Non-Party;

4 (2) promptly provide the Non-Party with a copy of the Stipulated
5 Protective Order in this Action, the relevant discovery request(s), and a
6 reasonably specific description of the information requested; and

7 (3) make the information requested available for inspection by the Non-
8 Party, if requested.

9 (c) If the Non-Party fails to seek a protective order from this court within 14
10 days of receiving the notice and accompanying information, the Receiving Party may
11 produce the Non-Party's confidential information responsive to the discovery request.
12 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
13 any information in its possession or control that is subject to the confidentiality
14 agreement with the Non-Party before a determination by the court. Absent a court
15 order to the contrary, the Non-Party shall bear the burden and expense of seeking
16 protection in this court of its Protected Material.

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
19 Protected Material to any person or in any circumstance not authorized under this
20 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
21 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
22 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
23 persons to whom unauthorized disclosures were made of all the terms of this Order,
24 and (d) request such person or persons to execute the "Acknowledgment and
25 Agreement to Be Bound" that is attached hereto as Exhibit A.
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11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material

1 under seal is denied by the court, then the Receiving Party may file the information in
2 the public record unless otherwise instructed by the court.

3 4 13. FINAL DISPOSITION

5 After the final disposition of this Action, as defined in paragraph 4, within 60 days of
6 a written request by the Designating Party, each Receiving Party must return all
7 Protected Material to the Producing Party or destroy such material. As used in this
8 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
9 summaries, and any other format reproducing or capturing any of the Protected
10 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
11 must submit a written certification to the Producing Party (and, if not the same person
12 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
13 category, where appropriate) all the Protected Material that was returned or destroyed
14 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
15 compilations, summaries or any other format reproducing or capturing any of the
16 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
17 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
18 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
19 attorney work product, and consultant and expert work product, even if such materials
20 contain Protected Material. Any such archival copies that contain or constitute
21 Protected Material remain subject to this Protective Order as set forth in Section 4
22 (DURATION).

23 14. Any violation of this Order may be punished by any and all appropriate measures
24 including, without limitation, contempt proceedings and/or monetary sanctions.

1 IT IS SO STIPULATED:

2
3 DATED: March 27, 2019

BUCHALTER
A Professional Corporation

4 By: /s/ Matthew L. Seror
5 MATTHEW L. SEROR
6 AARON M. LEVINE

7 Attorneys for Plaintiff
8 UNDISCOVERED CORP., a/b/a HEIST

9 DATED: March 27, 2019

SPRINGUT LAW PC

10 By: /s/ Milton Springut
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19 Attorneys for Defendant
20 HEIST STUDIOS

21 Pursuant to Civil L.R. 5-4.3.4(a)(2)(i), the filer attests that all other signatories
22 listed, and on whose behalf this filing is submitted, concur in the filing's content and
23 have authorized the filing.

24 DATED: March 27, 2019

25 By: /s/ Milton Springut
26 Milton Springut
27 Attorneys for Defendant
28 HEIST STUDIOS

1 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

2 DATED: April 1, 2019

3
4 /s/
5 Honorable Alka Sagar
6 United States Magistrate Judge
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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that
I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Central District of California on
[date] in the case of *Undiscovered Corp. v. Heist Studios*, Case No.: 2:18-cv-05719
FMO (ASx). I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Central District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action. I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____